City of Lafayette Staff Report

To:	City Council
Meeting Date:	June 23, 2008
From:	Glenda Warmoth, Assistant Planner
Date Written:	June 16, 2008
Subject:	Declaration of covenants for restriction on the design and use of a second unit between the property owner, Bruce Whitten and the City of Lafayette, for property located at 13 Sessions Road APN 232-040-023

Introduction

The attached declaration relating to the establishment and restrictions governing a new second unit on an existing residential property located at 13 Sessions Road. The declaration between Bruce Whitten and the City of Lafayette was one of the conditions of approval for design review application RZ02-94CC & MS502-94CC and requires the property owner to occupy the primary or secondary unit and prevents separate sale of said unit. The attached declaration meets the requirements for approval.

Recommendation

Accept declaration relating to use, sale and occupancy of second unit and authorize the City Clerk to record.

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RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN A COPY TO:

City of Lafayette
Planning Services Division
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

DECLARATION OF COVENANTS FOR RESTRICTIONS ON DESIGN AND USE OF SECOND UNIT APPLICATION, (SU03-07)AND PER APPROVED PLANS, DATED RECEIVED (Enter: Month, Date, Year),

This DECLARATION OF COVENANTS FOR RESTRICTIONS ("Declaration") is made this date,(Date to be entered by applicant's Notary), by (Bruce Whitten), hereinafter referred to as "Declarant", for and in favor of the City of Lafayette, a Municipal Corporation, hereinafter referred to as the "City."

RECITALS

This Declaration is based upon the following facts:

A. Declarant is the record owner of certain real property, located at (13 Sessions Road), APN 232-040-023 hereinafter the "Property", located in the City of Lafayette, County of Contra Costa, State of California, as described in Exhibit "A". Declarant desires to construct a second unit on the Property with a floor plan as described in more detail in Exhibit "B" attached to this Agreement and made a part of it by this reference.

B. The Property is in a Hillside Planned Development HPD Zoning District, which zoning district allows only one residential unit per lot.

C. On May 8, 2008, the City of Lafayette Zoning Administrator approved application, SU03-07 to allow a newly constructed and attached single-story building to be used as a second unit, located on the property. The 745 square footage second unit will include a kitchen and a bathroom and one off-street, uncovered parking stall.

D. As a condition of approval of application (SU03-07, the Declarant is required to record a deed restricting the use of the second unit.

Now, therefore, the Declarant covenants that the Property, shall be held, conveyed, assigned, hypothecated, encumbered, leased, used, occupied and improved subject to the following covenants:

1. Declarant shall comply with all the provisions of the zoning ordinance of the City of Lafayette.

2. Declarant shall occupy either the primary unit or second unit as his/her primary residence. Declarant may be absent from the primary or second unit for up to 12 consecutive months for health, family, employment or military reasons. The zoning administrator may grant two 12-month extensions at the request of the Declarant for such reasons.

3. The second unit shall not be sold separately.

4. Lack of compliance with this covenant may result in legal action against the Declarant.

5. This covenant shall run with the land herein described so long as the second unit continues to exist, and shall bind the grantees, heirs, executors, administrators and successors in interest of Declarant.

6. The Declarant hereby covenants that Declarant is the only recorded owner of the Property and is authorized to execute this Declaration. If there is more than one signer of this Declaration as Declarant, their obligations are joint and several.

IN WITNESS WHEREOF, the undersigned has made this covenant the day and year first written above.

DECLARANT:

Bruce E Whitten 5/15/08

Bruce Whitten

Note: Signature(s) of property owner(s) must be notarized.

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On May 15, 2008 before me, Diane Repulles Notary Public
(insert name and title of the officer)

personally appeared Bruce Whitten,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

DIANE REPULLES
Commission # 1562846
Notary Public - California
Contra Costa County
My Comm. Expires Apr 1, 2009

Signature Diane Repulles (Seal)

EXHIBIT "A"

(LEGAL DESCRIPTION OF PROPERTY

(ATTACH BEHIND THIS PAGE

Order No. 611-5705

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL "D", AS SHOWN ON THE MAP OF SUBDIVISION M.S. 502-94, FILED MARCH 4, 1998 IN BOOK 173 OF PARCEL MAPS, PAGE 32, CONTRA COSTA COUNTY RECORDS.

RESERVING FROM PARCEL ONE:

AN EASEMENT, NOT TO BE EXCLUSIVE, TO BE APPURTENANT TO AND FOR THE BENEFIT AND USE OF PARCELS "A", "B" AND "C", AS SHOWN ON SAID PARCEL MAP (173 PM 32) AND ANY SUBSEQUENT SUBDIVISION OR SUBDIVISIONS THEREOF, FOR THE PURPOSES OF ACCESS, PARKING, RECREATION, INGRESS AND EGRESS, UTILITIES AND SANITARY SEWERS, AND FOR USE FOR STORM, FLOOD AND SURFACE WATER DRAINAGE, INCLUDING ACCESS FOR CONSTRUCTION AND MAINTENANCE OF WORKS, IMPROVEMENTS AND STRUCTURES, WHETHER COVERED OR OPEN, OR THE CLEARING OF OBSTRUCTIONS AND VEGETATION, AND FOR INCIDENTAL PURPOSES, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF SAID PARCEL "D" (173 PM 32) DESIGNATED "P.A.U.E." (OR "SESSIONS ROAD") OR SAID PARCEL MAP (173 PM 32).

PARCEL TWO:

AN EASEMENT, NOT TO BE EXCLUSIVE, TO BE APPURTENANT TO AND FOR THE BENEFIT AND USE OF PARCEL ONE ABOVE AND ANY SUBSEQUENT SUBDIVISION OR SUBDIVISIONS THEREOF, FOR THE PURPOSES OF ACCESS, PARKING, RECREATION, INGRESS AND EGRESS, UTILITIES AND SANITARY SEWERS, AND FOR USE FOR STORM, FLOOD AND SURFACE WATER DRAINAGE, INCLUDING ACCESS FOR CONSTRUCTION AND MAINTENANCE OF WORKS, IMPROVEMENTS AND STRUCTURES, WHETHER COVERED OR OPEN, OR THE CLEARING OF OBSTRUCTIONS AND VEGETATION, AND FOR INCIDENTAL PURPOSES, OVER, UNDER, ACROSS AND THROUGH THOSE PORTIONS OF PARCELS "A", "B" AND "C", AS SHOWN ON THE MAP OF SUBDIVISION M.S. 502-94, FILED MARCH 4, 1998, BOOK 173 OF PARCEL MAPS, PAGE 32, CONTRA COSTA COUNTY RECORDS, DESIGNATED "P.A.U.E." (OR "SESSIONS ROAD") ON SAID PARCEL MAP (173 PM 32).

PARCEL THREE:

AN EASEMENT, NOT TO BE EXCLUSIVE, TO BE APPURTENANT TO AND FOR THE BENEFIT AND USE OF PARCEL ONE ABOVE AND ANY SUBSEQUENT SUBDIVISION OR SUBDIVISIONS THEREOF, FOR THE PURPOSE OF A PRIVATE SEWER LATERAL, AND INCIDENTAL PURPOSES, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF PARCEL "C", AS SHOWN ON THE MAP OF SUBDIVISION M.S. 502-94, FILED MARCH 4, 1998, BOOK 173 OF PARCEL MAPS, PAGE 32, CONTRA COSTA COUNTY RECORDS, DESIGNATED "10 P.S.S.E. FOR PCL. D" ON SAID PARCEL MAP (173 PM 32).

PARCEL FOUR:

EXHIBIT "A"
LEGAL DESCRIPTION continued

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS CREATED AS AN APPURTENANCE TO THE PARCEL OF LAND DESCRIBED AS PARCEL ONE ABOVE IN THE DEED FROM EDSON O. SESSIONS, ET AL, RECORDED JANUARY 31, 1967, BOOK 5296, OFFICIAL RECORDS, PAGE 435, OVER THE 50 FEET IN WIDTH STRIP OF LAND KNOWN AS SESSIONS ROAD, DESCRIBED AS FOLLOWS:

THAT PARCEL OF LAND IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, BEING A STRIP OF LAND, 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEAST LINE OF LOT 66, AS SHOWN ON THE MAP OF TRACT NO. 533-2, LA CANYADA PARK UNIT NO. 2, FILED MARCH 12, 1954, MAP BOOK 53, PAGE 12, CONTRA COSTA COUNTY RECORDS, DISTANT THEREON NORTH 59 DEGREES 23' 18" WEST, 28.30 FEET FROM THE NORTHEAST CORNER THEREOF; THENCE FROM SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 520 FEET, THE CENTER OF WHICH BEARS NORTH 49 DEGREES 28' 27" WEST, AN ARC DISTANCE OF 98.56 FEET; THENCE NORTH 29 DEGREES 40' EAST, TANGENT TO THE LAST CURVE, 146 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 550 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 71.20 FEET; THENCE NORTHEASTERLY AND NORTHWESTERLY ALONG THE ARC OF A REVERSE CURVE TO THE LEFT WITH A RADIUS OF 75 FEET, THE CENTER OF WHICH BEARS NORTH 52 DEGREES 55' WEST, AN ARC DISTANCE OF 115.15 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 80 FEET, THE CENTER OF WHICH BEARS NORTH 39 DEGREES 06' 48" EAST, AN ARC DISTANCE OF 207.65 FEET; THENCE SOUTH 82 DEGREES 10' EAST, TANGENT TO THE LAST CURVE, 163.26 FEET; THENCE NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 75 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 203.33 FEET; THENCE NORTH 57 DEGREES 30' WEST, TANGENT TO THE LAST CURVE, 40 FEET; THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 85 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 129.07 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A COMPOUND CURVE TO THE RIGHT WITH A RADIUS OF 350 FEET, THE CENTER OF WHICH BEARS SOUTH 60 DEGREES 30' EAST, AN ARC DISTANCE OF 118.10 FEET; THENCE NORTH 48 DEGREES 50' EAST, TANGENT TO THE LAST CURVE, 357.98 FEET; THENCE NORTH 83 DEGREES 30' WEST, 71.88 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 85 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 49.95 FEET; THENCE NORTH 49 DEGREES 50' WEST, TANGENT TO THE LAST CURVE, 44 FEET.

EXCEPTING FROM PARCEL FOUR: THOSE PORTIONS THEREOF LYING WITHIN THE LINES OF PARCELS ONE AND TWO ABOVE DESCRIBED.

PARCEL FIVE:

"AN EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES" CREATED IN REFERENCE TO THE PREMISES IN THE DEED TO DANA MURDOCK, ET UX, RECORDED APRIL 18, 1962, IN BOOK 4100 OF OFFICIAL RECORDS, PAGE 479, "OVER, UNDER, AND ALONG THE STRIP OF LAND OF A UNIFORM WIDTH OF 25.00 FEET LYING CONTIGUOUS TO AND NORTHERLY OF THAT PORTION OF THE BOUNDARY LINE OF PARCEL ONE" DESCRIBED IN SAID DEED (4100 OR 479) LYING BETWEEN "POINT C" AND "POINT D" REFERRED TO THEREIN.

EXHIBIT "A"
LEGAL DESCRIPTION continued

PARCEL SIX:

RIGHT OF WAY CREATED IN REFERENCE TO PARCEL ONE ABOVE IN THE DEED FROM PETAR JAKOVINA, RECORDED MARCH 10, 1998, SERIES NO. 98-049049, OFFICIAL RECORDS, AS FOLLOWS:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND UTILITIES, AND INCIDENTS THERETO, OVER, UNDER, ALONG AND THROUGH LOT 66, AS SHOWN ON THE MAP OF TRACT NO. 533-2, FILED MARCH 12, 1954, MAP BOOK 53, PAGE 12, CONTRA COSTA COUNTY RECORDS, FOR THE BENEFIT OF PARCEL ONE ABOVE.

EXCEPTING FROM PARCEL SIX: THAT PORTION OF SAID LOT 66 (53 M 12) CONVEYED TO C.V. RAMAMOORTHY, ET UX, BY DEED RECORDED MARCH 4, 1987, BOOK 13486, PAGE 46, OFFICIAL RECORDS.

A.P.N. 232-040-023

EXHIBIT "B"

(APPROVED FLOOR PLAN)

(A COPY OF THE RECORDED DOCUMENT SHALL BE SUBMITTED TO THE CITY)

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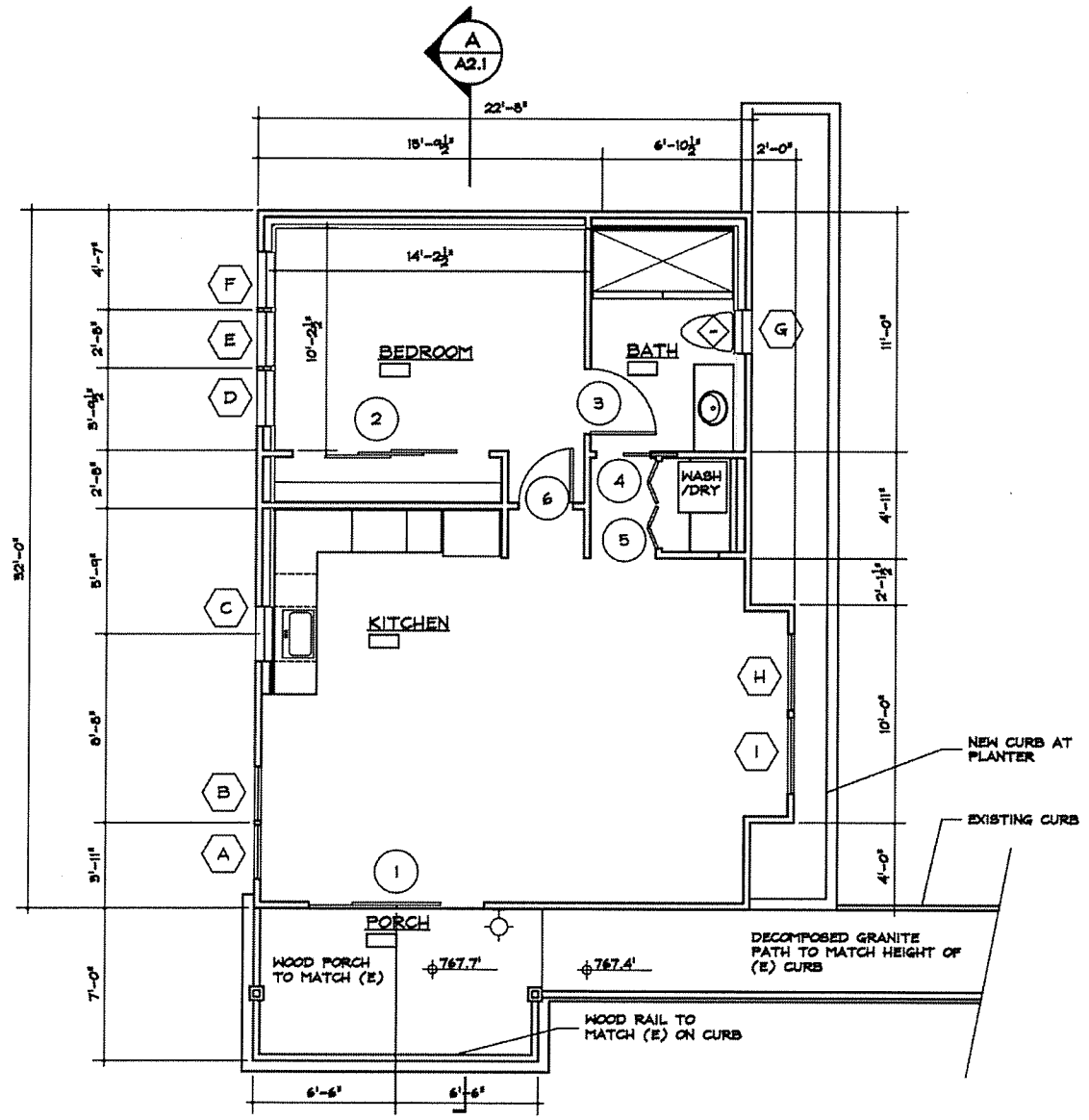

SECOND UNIT FLOOR PLAN

00 04 08 16 feet